

Part 3

Enforcement

16-4-301 Enforcement of assessment.

- (1) Payment of a delinquent assessment may be enforced by a corporation in one or more of the following ways:
 - (a) imposition of a late charge, penalty, or interest;
 - (b) suspension of one or more benefits of share ownership, including the right to vote, to transfer shares, or to delivery of water in the case of a water company;
 - (c) sale at public auction of the shares on which payment is delinquent; and
 - (d) any other enforcement method specified in the corporation's articles of incorporation.
- (2) In an enforcement action, the corporation may recover the delinquent assessment, any late charge, penalty, or interest, and all costs of collection, including attorney fees.
- (3)
 - (a) The board of directors shall follow enforcement procedures:
 - (i) as set forth in the articles of incorporation or bylaws; or
 - (ii) as determined by the board of directors in a manner consistent with the board of directors' fiduciary duty to shareholders.
 - (b) If the board of directors determines to sell shares at public auction, the board shall follow the procedures required by Sections 16-4-302 through 16-4-312.

Enacted by Chapter 367, 2007 General Session

16-4-302 Notice of sale -- Form.

Upon a determination by the board of directors to sell shares on which payment of an assessment is delinquent and the adoption of an order to sell the shares, the secretary shall prepare a notice of sale, including:

- (1) the name of the corporation;
- (2) the location of the corporation's principal place of business;
- (3) the date on which the assessment order was adopted;
- (4) a description of the shares on which an assessment is delinquent, including the name of any owner, certificate numbers if share certificates exist, and the number of shares represented by any certificate;
- (5) a description of the amount due and payable with respect to each share on which an assessment is delinquent, including the assessment, any late charge, penalty, or interest, and the estimated costs and expenses of collection;
- (6) a statement of the date, time, and place of the sale of shares to pay the amount payable if the amount is not paid before the identified date; and
- (7) a statement that if shares are purchased at the auction by the corporation, or a director or officer of the corporation for the benefit of the officer or director, the shares may be redeemed by the shareholder for a period of 30 days after the day on which the shares are sold.

Enacted by Chapter 367, 2007 General Session

16-4-303 Service and publication of notice of sale.

- (1) The notice of sale required by Section 16-4-302 shall be:
 - (a) personally served on each shareholder whose share is subject to sale; or

- (b) sent by certified mail, return-receipt requested, to each shareholder whose share is subject to sale at the address shown on the corporation's records.
- (2) A shareholder is responsible for providing the shareholder's current mailing address to the corporation for purposes of Subsection (1).
- (3) The notice required by Subsection (1) shall be served or mailed at least 15 days, but not more than 30 days before the day on which the sale is to occur.
- (4) A notice of sale shall be published:
 - (a) once a week for two weeks in a newspaper of general circulation in the location of the corporation's principal place of business beginning at least 15 days but no more than 45 days before the day on which the sale is to occur; and
 - (b) in accordance with Section 45-1-101 for 45 days before the day on which the sale is to occur.

Amended by Chapter 388, 2009 General Session

16-4-304 Power of sale.

The service or mailing and publication of the notice of sale required under Section 16-4-303 gives a corporation power to sell and convey all the shares described in the notice of sale upon which any delinquent assessment or other amount remains unpaid at the time appointed for the sale.

Enacted by Chapter 367, 2007 General Session

16-4-305 Number of shares to be sold.

- (1) On the day, at the time and place appointed for a sale under this part, the secretary or other officer shall sell at public auction to the highest bidder for cash the number of shares necessary to pay all amounts due on an overdue assessment.
- (2) Shares shall be sold in the smallest fraction as authorized in the articles of incorporation or the bylaws.
- (3) The public auction shall be conducted by open bid, sealed bid, or by other means provided in the articles of incorporation or bylaws that reasonably protects the delinquent shareholder's interest.
- (4) Proceeds of a sale in excess of the assessment and other amounts due shall be promptly paid to the shareholder whose shares were sold.

Enacted by Chapter 367, 2007 General Session

16-4-306 Determining the highest bidder -- Transfer to highest bidder.

- (1)
 - (a) The person offering at a sale to pay the highest amount for the smallest number or fraction of shares, which may not be less than the delinquent assessment and all other amounts payable, is the highest bidder.
 - (b) Whether the bid is for the smallest number or fraction of shares is determined by the articles of incorporation.
- (2) The shares purchased shall be transferred to the highest bidder on the share books of the corporation upon payment of the bid amount.

Enacted by Chapter 367, 2007 General Session

16-4-307 Purchase by corporation, officer, or director -- Redemption.

- (1)
 - (a) If at the sale of shares, no bidder offers the amount of the delinquent assessment and all other amounts payable, the shares may be bid on and purchased by the corporation through the secretary, president, or any director for the amount of the delinquent assessment and all other amounts payable.
 - (b) If a corporation purchases shares under Subsection (1), the delinquent assessment and all other amounts payable shall be credited as paid in full on the books of the corporation.
- (2) If purchased under Subsection (1), entry of the transfer of the shares to the corporation shall be made on the corporation's books.
- (3) Any shares acquired by a corporation under this section, or purchased by an officer or director for the officer's or director's own benefit, are subject to redemption by the shareholder for a period of 30 days following the day on which the shares are sold at auction.
- (4)
 - (a) Shares subject to redemption under Subsection (3) may be redeemed at a price equal to the amount of the delinquent assessment and all other amounts payable on the day of the sale, plus interest through the day on which the shares are redeemed.
 - (b) The amount of interest under Subsection (4)(a) is the amount determined under Section 15-1-4.

Enacted by Chapter 367, 2007 General Session

16-4-308 Status of shares purchased by corporation, officer, or director.

- (1)
 - (a) Title to any shares purchased by a corporation under Section 16-4-307 vests in the corporation upon expiration of the 30-day redemption period if the right of redemption is not exercised.
 - (b) Shares purchased by a corporation under Section 16-4-307 are treated as treasury shares and shall be held and disposed of in a manner expressly provided for in Title 16, Chapter 10a, Utah Revised Business Corporation Act.
 - (c) Any shares held by a corporation under this section are not assessable.
 - (d) No dividends or distributions may be made on shares held by the corporation.
- (2)
 - (a) Title to any shares purchased by an officer or director of the corporation for the officer's or director's own benefit vest in the officer or director upon expiration of the 30-day redemption period if the right of redemption is not exercised.
 - (b) Shares purchased by an officer or director for the officer's or director's own benefit are subject to all assessments levied by the corporation after the assessment that was the basis for the sale at which the officer or director purchased the shares.

Enacted by Chapter 367, 2007 General Session

16-4-309 Extension of time specified in notices.

- (1) The dates fixed in any notice of assessment or notice of sale may be extended for up to six months by order of the board of directors entered on the corporation's records.
- (2) No order extending the time for the performance of any act specified in any notice under this chapter is effective unless notice of the extension is published and served in the same manner as the original notice.

Enacted by Chapter 367, 2007 General Session

16-4-310 Error or omission in proceedings -- Effect.

- (1) No assessment is invalidated by:
 - (a) a failure to serve, mail, or publish the notice of sale;
 - (b) the omission of any information required to be contained in the notice; or
 - (c) the nonperformance of any act otherwise required to be performed in connection with the sale of shares to enforce payment of an assessment.
- (2) No sale is valid unless proper notice is given and any material acts of nonperformance are corrected.

Enacted by Chapter 367, 2007 General Session

16-4-311 Action to recover shares sold -- Tender -- Limitation of action.

- (1) No action may be brought to recover shares sold for a delinquent assessment based on irregularity or defect in the notice of sale or the sale unless the person bringing the action first pays or tenders payment to the corporation or to the person holding the shares sold:
 - (a) the amount for which the shares were sold;
 - (b) the amount of all subsequent assessments levied on the shares; and
 - (c) interest on the amounts identified in Subsections (1)(a) and (b) from the time the amounts were paid by the person purchasing the shares.
- (2) No action may be brought to recover shares sold under this part more than six months after the sale of the shares at auction.

Enacted by Chapter 367, 2007 General Session

16-4-312 Affidavit and posting of notice -- Evidence.

- (1) An affidavit made by the secretary of a corporation of the mailing of a notice required by this chapter is prima facie evidence of the existence and mailing of the notice.
- (2) The publication of a notice under this chapter may be proved by the affidavit of:
 - (a) the printer foreman or principal clerk of the newspaper in which the notice was published; and
 - (b) in accordance with Section 45-1-101, the website publisher or website publisher's designee charged with publishing the notice as required in Section 45-1-101.
- (3) The affidavit of the secretary of the corporation or the auctioneer responsible for selling shares is prima facie evidence of:
 - (a) the time and place of sale;
 - (b) the quantity and particular description of the shares sold;
 - (c) to whom and for what price the shares were sold; and
 - (d) the fact of the purchase money being paid.
- (4) The affidavits referenced in this section shall be filed in the corporation's office.
- (5) A copy of an affidavit referenced in this section is prima facie evidence of the facts contained in the affidavit if the affidavit is certified by the secretary.

Amended by Chapter 388, 2009 General Session